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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT DENIED BY )  
ISLAND COUNTY TO WASHINGTON )  
STATE DEPARTMENT OF NATURAL )  
RESOURCES )  
STATE OF WASHINGTON, )  
DEPARTMENT OF NATURAL RESOURCES, )  
Appellant, )  
v. )  
ISLAND COUNTY, )  
Respondent. )

SHB No. 77-8

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

A hearing on the request for review of the decision by Island County denying a substantial development permit application came before the Shorelines Hearings Board, W. A. Gissberg, presiding, Robert E. Beaty, Robert F. Hintz, Dave J. Mooney, and Chris Smith on May 23, 24, 25 and 26, 1977 in Lacey, Washington. Board member Robert F. Hintz was not in attendance on May 26, 1977.

Appellant was represented by Maureen B. Fitzmahan, Assistant

1 Attorney General; respondent was represented by Alan R. Hancock,  
2 Deputy Prosecuting Attorney.

3 Having heard the testimony, having examined the exhibits, and  
4 being fully advised, the Shorelines Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 The proposed substantial development is the establishment of a  
8 deep water disposal site for dredged spoils upon state-managed beds  
9 under navigable waters in Admiralty Inlet at Longitude 122°38'15" and  
10 Latitude 48°05'30". The site is 1,800 feet in diameter and is located  
11 in the northwest and deepest part of a trench the bottom of which is  
12 approximately 600 feet beneath the surface of Puget Sound. The site is  
13 located midchannel in Admiralty Inlet about 1-3/4 miles from Whidbey  
14 Island. The bottom is characterized by coarse sediments, sand,  
15 cobbles and gravel, and is subject to water currents running up to  
16 2.9 knots. The subject site is located in an aquatic environment  
17 designation within natural shorelines of state-wide significance.

18 II

19 On October 27, 1975 the appellant applied for a substantial  
20 development permit from respondent Island County for the foregoing  
21 development. After two reviews made by the Planning Commission<sup>1</sup> and  
22 County Commissioners, the application was denied, which decision was  
23 filed with the Department of Ecology on January 13, 1977 and from  
24

25 1. The first review by the Planning Commission resulted in a  
26 recommendation for approval. It was after a remand by the County  
27 Commissioners that the Planning Commission reversed its original  
recommendation.

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1 which appellant made its timely appeal.

2 III

3 The permit application does not describe the kind and amount of  
4 material intended to be deposited at the site, nor are the means and  
5 duration of the dumping disclosed. When the application is supplemented  
6 with the Final Environmental Impact Statement (EIS), the intent appears  
7 to be that only clean, non-toxic material will be placed at the site by  
8 barge at a rate of 75,000 cubic yards per year.

9 IV

10 The appellant prepared a draft EIS which it submitted together  
11 with its permit application to Island County. In November, 1975,  
12 various federal and state agencies including some member agencies  
13 of an Inter-Agency Dredge Spoils Disposal Site Selection Committee  
14 received copies of the draft EIS. Comments to the draft EIS were made  
15 by the State Department of Game and the Island County Planning Department,  
16 which comments were responded to by appellant in the final EIS. The  
17 final EIS was filed in the Department of Natural Resources (DNR) SEPA  
18 Information Center on February 13, 1976.

19 V

20 Deep water disposal of spoils at locations near the site of  
21 dredging was and is one of the methods used to dispose of such spoils. In  
22 the late 1960s, DNR in reviewing its policies with respect to such dumping  
23 ultimately formed an Inter-Agency Dredge Spoils Disposal Site Selection  
24 Committee which consists of U. S. Fish and Wildlife Service, National  
25 Marine Fisheries Service, U. S. Army Corps of Engineers, U. S. Environmenta  
26 Protection Agency, Department of Fisheries, Department of Ecology,

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1 Department of Game and Department of Natural Resources. The purpose of the  
2 Inter-Agency Committee was to recommend locations for regional deep water  
3 disposal sites to the DNR which has statutory management responsibility  
4 for the state's marine bedlands and hence, has assumed responsibility  
5 of identifying environmentally acceptable spoils disposal sites.

6 Sites which have been selected by the Committee for disposal  
7 include Padilla Bay, Port Angeles, Dana Passage, Steilacoom, Commencement  
8 Bay, Skagit Bay, Port Gardner, Bellingham Channel, Bellingham Bay, Port  
9 Madison, Four Mile Rock in Elliott Bay, and Port Townsend. The selection  
10 of those sites was based on unanimous agreement of the committee members  
11 after reviewing need and all other available information.

12 Because of the complaints of commercial fishermen the Port Townsend  
13 disposal site designation was rescinded at the request of the Department  
14 of Fisheries. Island County was not invited to, nor did it, participate  
15 in the disposal site selection other than through the processing of  
16 the instant shoreline management substantial development permit. The  
17 instant site was recommended by the Department of Fisheries because  
18 the impact, if any, upon commercial and sport fishing is less than at  
19 any other potential site in the area.

20 The guidelines for deep water disposal sites formulated by the  
21 Inter-Agency Committee are:

- 22 1. Select areas of common or usual natural characteristics.  
23 Avoid areas with uncommon or unusual characteristics.
- 24 2. Select areas of minimal dispersal of spoil material rather  
25 than maximum widespread dispersal.
- 26 3. Sites subject to high velocity currents will be limited to  
27 sandy or coarse material.
4. When possible use disposal sites that have substrates  
similar to the spoil material.
5. Select areas close to dredge sources to insure use of the  
sites.

6. Protect known fish nursery, fishery harvest areas, fish migration routes, and fish or shellfish culture installations.

The site is not consistent with all the guidelines, but such guidelines are not binding and do not reflect exceptions dealt with on a case by case basis. For example, in Admiralty Inlet, dispersion of material due to high velocity currents was not deemed a problem if the material was limited to clean, i.e., non-toxic, materials.

#### VII

If the instant dumping site is approved, appellant intends to lease it, for a fee, to persons wishing to dispose of material generated from the dredging of navigational and harbor areas. Such persons are also required by federal law to obtain a U. S. Corps of Engineers' permit. Before granting a permit, the Corps is required to and does solicit comment regarding an application from various state and federal agencies whose goals are to protect the environment. The Corps cannot grant a permit when an objection is made by the U. S. Environmental Protection Agency (EPA). In its review of such applications, EPA determines the toxicity or pollutant content of the dredge spoils. If the material is found to be toxic or polluted, it cannot be dumped in the water.

#### VIII

DNR applies the revenue generated from its lease fees for management of the site, research projects on effects of deep water disposal and as general tax dollars. If a person dumps without receiving a DNR lease, or dumps beyond the scope of the lease, such person is subject to a penalty of 50 cents to two dollars per cubic yard dumped, if discovered. A leasee must give 24 hours notice to the DNR prior to dumping on the

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1 designated area. DNR has in its employ only one person who monitors  
2 dumping on a spot check basis.

### 3 IX

4 The appellant encourages the use of upland sites by recommending  
5 such, or by denying use of a deep water disposal site when the material  
6 to be deposited is not suitable therefor. There are but few upland  
7 sites now available in Puget Sound and none identified in the region  
8 to be serviced by this proposal. The appellant and other agencies in  
9 the Committee have not attempted to find upland sites. When available,  
10 it is vital that the upland sites be used for the deposition of polluted  
11 and toxic materials.

### 12 X

13 Dredging and disposal of material by clamshell and barge results in  
14 the suspension of less materials in water than does the cutterhead and  
15 pipeline method. In the former case, disposal of material is released  
16 as a mass; in the latter case, disposal of materials is released as a  
17 slurry. There are problems and unknown impacts associated with the  
18 pipeline method of disposal, especially as to the placing into suspension  
19 of large quantities of silt and other fine material.

20 Materials proposed to be disposed of at the subject site will be  
21 dredged by clamshell and hauled by barge, ordinarily of 500 cubic yard  
22 capacity. Although there have been no studies made as to the effects  
23 of barge dumping at the site, the use of studies made at a similar site,  
24 with appropriate adjustments, can be used to make reasonable  
25 predictions at the subject site. Such study and expert opinions show  
26 that the mass of material (containing 78 percent silt and clay,

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1 and 22 percent sand) will go directly to the bottom. Small (one to  
2 ten percent) amounts of silt and other fine material are likely to be  
3 placed in suspension as it falls through the water column. These  
4 fine materials would be carried away by the water currents and eventually  
5 settle out in one of the quiet bays of Puget Sound away from Admiralty  
6 Bay. A plume of about 500 yards by 200 yards by 3 yards, would be  
7 visible in the water for about one-half hour after each dump.  
8 Turbidity at the bottom would be momentarily high after the material  
9 hits the bottom because of its high landing velocity. The mass of  
10 material which reaches the bottom will be subject to rapid erosion by  
11 the bottom currents until the deposit is consolidated. Silt suspended  
12 near the bottom is unlikely to reach either the surface water or  
13 surface currents in Admiralty Inlet because of the depth of the deposit,  
14 channel restrictions, and saline gradient of the water. Coarser  
15 material is likely to move along the bottom in a southward direction  
16 into Puget Sound.

## 17 XI

18 Generally and at some unknown point, turbidity can be expected to  
19 suffocate fish and other sea life. However, the turbidity caused by  
20 dumping at the site is not likely to harm fish and other sea life in the  
21 concentration and duration resulting from a 500 cubic yard dump of 78  
22 percent silt material. Not only is it unlikely that turbidity at the site  
23 will reach the nearby shores, but it is also unlikely that juvenile salmon  
24 would be adversely affected by turbidity or would be forced out of the  
25 shallows because of turbidity and thus be subject to increased predation  
26 by larger fish.

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XII

1  
2 There are commercially and recreationally significant fisheries and  
3 spawning areas located at various distances from the site. Recreational  
4 areas include Lagoon Point and Admiralty Head. Commercial areas include  
5 Port Townsend and Marrowstone Island. Spawning areas for bottom fish are  
6 located at Port Townsend, Port Gamble, Protection Island, and Discovery  
7 Bay. There are significant beds of shellfish population at Lagoon Point.  
8 The peak of the out migration of juvenile salmon in the shallows near  
9 the shores of Admiralty Inlet occurs between March 15 and June 15 of  
10 each year.

XIII

11  
12 Although uncontrolled spoils disposal could involve fish kills and  
13 reduced productivity of the ocean bed, the barge method of disposal at  
14 the subject site of not more than 260,000 cubic yards of clean material  
15 at the times and subject to the monitoring contemplated herein is not  
16 likely to cause significant adverse effects to bottom or other fish, or  
17 shellfish, near the site. The site, which is neither unique nor fragile,  
18 is not a promising habitat for significant amounts of sea life by any  
19 reasonable estimate because of the extreme depth and bottom characteristics  
20 If any shellfish are at the site, they would most likely be destroyed by  
21 the deposition of materials. As compared to other possible areas in  
22 the region, the use of the subject site would have the least impact on  
23 commercial and recreational fishing, notwithstanding that a recreational  
24 fishing area is located at Lagoon Point, which is one and three quarter  
25 miles from the site.

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1 XIV

2 It is unlikely that there will be an adverse effect upon the  
3 shores of Puget Sound resulting from the properly controlled dumping  
4 of up to 260,000 cubic yards as conditioned by this Board. Beyond  
5 that amount the adverse effects of further dumping are unknown.

6 It is not known how much material can be deposited on the  
7 bottom without changing the characteristics of the bottom. In any  
8 event, 260,000 cubic yards of material would be a relatively small  
9 quantity for the system to receive and such would be environmentally  
10 acceptable. The resultant erosion of material at the site and the  
11 drift of sedimentation to other locations from such a deposit would  
12 not alter the natural function of the water system.

13 An accretion of material is now occurring at Lagoon Point  
14 as a result of the construction of a jetty. Such accretion is likely  
15 to continue.

16 XV

17 There is a need for a deep water spoils disposal site near and  
18 to serve Hood Canal, Island County and Port Townsend. The foremost  
19 need results from maintenance dredging of navigable channels used in  
20 commerce. It is anticipated that the majority of the spoils will be  
21 from Port Townsend, but the exact amount involved is unknown.

22 XVI

23 Island County's Master Program was adopted by respondent in  
24 December of 1975 and was approved by the Department of Ecology prior  
25 to the denial of the instant permit. The master program does not  
26 designate either upland or water spoils disposal sites. But for the absence

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1 of use regulations, both types of sites would require a conditional use  
2 permit.

3 The Environment Development Policies for the Aquatic Environment  
4 provides in part that priority is given to those marine use activities  
5 which create the least impact on tidelands, and that uses upon aquatic  
6 lands be designed to allow safe passage of migrating animals (Sections  
7 10 and 16, pages 71-73). The Goal of the Shoreline Use Element is to  
8 "assure that conservation and development of Island County's shoreline  
9 is balanced, orderly, in suitable locations, and done with minimum  
10 disruption to the natural environment." The Goal of the Conservation  
11 Element is to "assure preservation and continued utilization of  
12 Island County's unique, fragile and scenic resources." (pages 45-47)  
13 The Goal of the Circulation Element is to "develop safe, convenient  
14 and diversified shoreline-dependent circulation systems to assure  
15 efficient movement of goods and people with minimum disruption to the  
16 shoreline environment and minimum conflict between the different  
17 users." (page 43)

18       The policy with respect to dredging provides for the control of  
19 dredging to minimize damage to existing resources at both the dredged  
20 and disposal areas. (page 59)

## XVII

22 Any Conclusion of Law which should be deemed a Finding of Fact  
23 is hereby adopted as such.

24 From these Findings the Board comes to these

### CONCLUSIONS OF LAW

## I

27 The Board has jurisdiction over the persons and over the subject

1 matter of this proceeding.

2 II

3 The standard for review of the present action denying an  
4 application for a substantial development permit is whether a permit  
5 should have been granted because the development proposed "is consistent  
6 with the applicable master program and the provisions of RCW 90.58."  
7 RCW 90.58.140(2)(b). The burden of proof is upon the appellant, DNR.

8 III

9 The procedural provisions of SEPA require full disclosure of  
10 environmental consequences. Norway Hill v. King County Council,  
11 87 Wn.2d 267, 272 (1976). Governmental agencies are required to  
12 evaluate environmental factors and for this reason certain actions  
13 require an EIS. Eastlake Com. Coun. v. Roanoke Assoc., 82 Wn.2d 475,  
14 496 (1973). When the adequacy of an EIS is at issue, the question  
15 to be answered is whether the environmental effects of the proposed  
16 action and reasonable alternatives are sufficiently disclosed, discussed  
17 and that they are substantiated by supportive opinion and data.  
18 Leschi v. Highway Comm'n, 84 Wn.2d 271, 286 (1974).

19 The mandate of SEPA does not require that every remote and  
20 speculative consequence of an action be included in the EIS.  
21 The adequacy of an EIS must be judged by application of the  
rule of reason.

22 Cheney v. Mountlake Terrace, 87 Wn.2d 338, 344 (1976). Respondent  
23 contends that there is inadequate environmental information to assess  
24 impacts of the proposed action. We do not agree. The evidence  
25 discloses a reasonable and deliberated effort to anticipate environ-  
26 mental consequences in a world which wants of perfect knowledge. The

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1 instant EIS was a reasonable and adequate statement in light thereof  
2 and was supported by ample evidence.

3 Respondent's remaining SEPA issues are without merit.

4 IV

5 The dredging of marine beds presupposes the disposal of the  
6 resultant spoils. Although dredging may occur for a water-dependent  
7 use, the disposal in water of the spoils is not necessarily an intrinsic  
8 part of such water-dependent use. Dredge spoils can be deposited upon  
9 upland sites out of the shoreline although at a higher economic cost as  
10 compared to water or shoreline disposal.

11 Although a proposed development is neither water-dependent nor  
12 water-related that fact does not necessarily bar it from locating upon  
13 natural shorelines. In general, uses which are consistent with control  
14 pollution and prevention of damage to the natural environment are  
15 preferred. Spoils disposal in water is not by itself a priority use of the  
16 shoreline, however. But it does not follow therefrom that such  
17 disposal is therefore barred. Rather, if the public interest is  
18 promoted, and is otherwise consistent with the provisions of  
19 RCW 90.58, it may be allowed. The evidence discloses that reduced  
20 dredging due to a lack of upland or water dredge disposal sites would  
21 adversely affect navigation of seagoing vessels in the regional area of  
22 concern. Dredging for navigational purposes, and such necessary water  
23 disposal of spoils, facilitates a necessary transportation system and is  
24 in the long term statewide public interest. See Burlington Northern,  
25 Inc. v. Town of Steilacoom, SHB 40.

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V

The proposed development is not inconsistent with the order of preferences set forth in RCW 90.58.020 for shorelines of statewide significance. The master program, as the relevant provisions apply to implementing these preferences, requires solicitation of comments and opinions from persons and organizations, designation of an environment (here "Aquatic"), leaving of unique or fragile areas undeveloped, preventing erosion and sedimentations that would alter the natural function of the water system, and facilitate recreational use of the shorelines. (Master Program, pgs. 74-75.) We find the proposed development consistent therewith.

VI

The adopted and approved master program does not identify deposit sites on land or water areas. However, the master program provisions do require that damage to existing ecological values and natural resources in the area for deposit of spoils is to be minimized. (See Finding of Fact XVI.) Although expert opinion has shown that no adverse effect should result from 260,000 cubic yards dumped by barge, we recognize that these experts are human and can err. But rather than deny the application for lack of certainty, it would be in the statewide public interest to allow the proposed development to proceed provided that a permit was issued subject to such conditions as would insure compliance with the master program and minimize any possible damage to the environment.

Based upon the evidence presented at our hearing, much of which was not before the county, we find the proposed development consistent

1 with provisions of the master program and the provisions of  
2 RCW 90.58.

3 VII

4 The action of Island County denying a substantial development  
5 permit to DNR was not arbitrary and capricious.

6 VIII

7 The matter should be remanded to Island County to issue a permit  
8 which contains the following conditions:

- 9 1. All spoils to be dumped at the site must first  
10 receive U. S. Environmental Protection Agency  
11 and the State Department of Fisheries approval as  
12 non-toxic and records shall be maintained by DNR  
13 as to analysis of type of fill prior to dumping.
- 14 2. No dumping shall occur between March 15 and June 15  
15 of each year.
- 16 3. Dumping shall be limited to 75,000 cubic yards per year  
17 by barge until a total of 260,000 cubic yards has been  
18 deposited.
- 19 4. The DNR is required to bear the expense of and monitor the  
20 water quality and the deposition of materials along the shores  
21 of land abutting Admiralty Head in the north to Foulweather  
22 Bluff in the south. Such monitoring shall be conducted  
23 pursuant to a program determined jointly by the Department  
24 of Fisheries and the Department of Ecology after consultation  
25 with Island County. The results and data of the monitoring  
26 shall be provided to Island County and the Department of  
27 Fisheries as and when the same shall become known. If the  
Department of Fisheries shall determine that the effects of  
dumping are significantly detrimental to fish or shellfish  
the permit shall be rescinded.

IX

Any Finding of Fact which should be deemed a Conclusion of Law  
is hereby adopted as such.


From these Conclusions, the Board enters this  
FINAL FINDINGS OF FACT,  
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ORDER

The action of Island County denying a shoreline substantial development permit to the Department of Natural Resources is reversed and remanded for permit issuance in accordance with Conclusion of Law VIII.

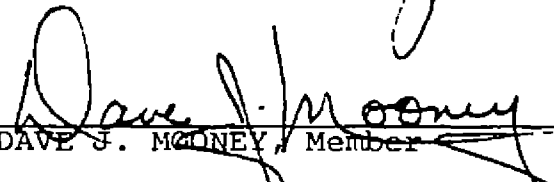
DATED this 5<sup>th</sup> day of July, 1977.

SHORELINES HEARINGS BOARD

  
W. A. GISSBERG, Chairman

  
ROBERT E. BEATY, Member

  
ROBERT F. HINTZ, Member

  
DAVE J. MCONEY, Member

  
CHRIS SMITH, Member

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